

BOULDER CITY COUNCIL PROCEEDINGS

Tuesday, July 19, 2011

1. CALL TO ORDER AND ROLL CALL

Mayor Osborne called the regular July 19, 2011 City Council meeting to order at 5:10 p.m. in Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Gray, and Morzel.

A. Colfax Marathon Award.

Jandell Allen-Davis, Vice President of Government and External Relations for Kaiser Permanente recognized the City's team of marathon runners for placing in the Colfax Marathon and presented a check to the non-profit recipient, Laura Merrick with the Colorado Therapeutic Riding Association. Andrea Dowdy, Executive Director of the Kaiser Permanente Colfax Marathon then spoke to the event and Mayor Osborne thanked City staff members Kevin Krayna, Rick Jones, Chris Douville, Joe Cowan and Sarah Stevens for their participation.

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE – 5:25 p.m.

1. Edna Loehman raised concern about the increased costs to the voters and security of a new utility/municipalization system.
2. Judy Lubow spoke in support of the Move to Amend referendum and indicated that it was not intended for the referendum to determine the details but rather asked Council to give the people the option to vote on the issue.
3. Cecelia Kluding spoke in support of municipalization and thanked Council for leading the community down this path.
4. Laura Spicer, Vice Chair of the Boulder County Democratic Party, spoke in support of the Move to Amend referendum. She clarified that there was nothing in the referendum that would otherwise restrict corporation's rights.
5. Seth Brigham thought Council should bypass putting the Move to Amend referendum on the ballot due to election costs. Please pass a referendum to end the war in Afghanistan.
6. Elizabeth Payton on behalf of PLAN Boulder County spoke in support of the Move to Amend Referendum so the citizens could decide whether to support the initiative to overturn the decision made in Citizens United.
7. Scott Silver also spoke in support of the Move to Amend referendum noting numerous statistics on corporate interests in election campaigns. Let the citizens vote.
8. Dan Gould Chair of the Boulder County Democratic Party supported referendum language as presented in the Boulder Daily Camera. The language was simple and strong and did not require specific detail which would be worked out later. The concept was simple and powerful.

9. Lisa Schafer spoke to the Open Space public meeting on possibilities for the Anemone trail and urged Council to talk to staff and ask them to include a no bike option at Anemone.
10. Christine Rubin spoke to an issue of trying to sell an affordable home that was purchased as a 4 bedroom from the city's affordable housing program. They were told it could now only be sold as a 2 bedroom home. She cited numerous issues in dealing with the city's affordable housing office and asked Council to have staff buy back the home into their affordable housing program.
11. Tricia Olson spoke to the Move to Amend referendum and supported Council putting this matter on the ballot.
12. Audy Leggere-Hickey spoke in support of the Move to Amend referendum to amend the United States Constitution. She would like her vote to count.
13. Dominick Saia spoke in favor of placing a corporate personhood referendum on the ballot. As an attorney and social studies teacher the Constitution is near and dear to his heart. Campaign Finance Reform was important in Boulder and he felt the same was needed at the national level.
14. George Newell representing Veterans for Peace indicated that the Citizens United decision made bribery legal and he supported putting the Move to Amend referendum on the ballot.
15. Elena Nunez with Colorado Common Cause supported a Resolution in opposition to Citizens United. She further stated it was entirely appropriate for local government to support its citizens in voicing their opinions on national issues.
16. Carolyn Bninski representing Boulder County Move to Amend and the Rocky Mountain Peace and Justice Center urged Council to use the Madison language and use both the corporate personhood and money as speech language. Please use the original language.
17. Joseph Illingworth urged Council that this was a local issue and the city could find the time and money to move this forward.
18. Erin Musso spoke to DRC in Africa and the importance of pressuring businesses to approve transparent supply chains. She urged Boulder to pass a resolution in support of Conga free products.
19. Robin Beeck a CU student indicated that students were concerned about corporate power and supported placing the Move to Amend referendum on the ballot to allow citizens to decide.
20. Jackie Goldner a retired American Studies teacher spoke in support of the Move to Amend referendum being placed on the ballot.
21. Gina Harden with Colorado Common Cause spoke to the importance of continuing to support corporations but ensure those corporations continue to support the people.

City Manager Response:

Regarding the affordable housing issue expressed by the Rubin's, the City Attorney's office was handling the issue as the claimants had an attorney representing them and it was now a matter of litigation.

City Council Response: - None.

3. **CONSENT AGENDA: - 6:15 p.m.**

- A. **CONSIDERATION OF A MOTION TO APPROVE THE MAY 17, 2011 CITY COUNCIL MEETING MINUTES.**
- B. **CONSIDERATION OF A MOTION TO APPROVE THE MAY 24, 2011 CITY COUNCIL MEETING MINUTES.**
- C. **CONSIDERATION OF A MOTION TO APPROVE THE JUNE 7, 2011 CITY COUNCIL MEETING MINUTES.**
- D. **CONSIDERATION OF A MOTION TO APPROVE THE JUNE 16, 2011 CITY COUNCIL MEETING MINUTES.**
- E. **CONSIDERATION OF A MOTION TO ACCEPT THE APRIL 26, 2011 STUDY SESSION SUMMARY REGARDING 2012 BUDGET DEVELOPMENT AND POTENTIAL NOVEMBER 2011 BALLOT ITEMS.**
- F. **CONSIDERATION OF A MOTION TO ACCEPT THE SUMMARY OF THE JUNE 9, 2011 JOINT CITY COUNCIL/LANDMARKS BOARD STUDY SESSION ON SUSTAINABILITY AND CHAUTAUQUA.**

Council Member Gray requested an amendment on page 4 and would like it added that a Council Member asked to have a list serv or web site set up to keep interested members of the public informed.

- G. **CONSIDERATION OF A MOTION TO ACCEPT THE SUMMARY OF THE JUNE 9, 2011 CITY COUNCIL STUDY SESSION REGARDING THE AFFORDABLE HOUSING TASK FORCE.**

Council Member Gray requested an amendment on page 6, under item 4, OAU's and ADU's. She noted the discussion was based on expanding OAU's to zones where they aren't permitted.

Council Member Gray also requested an amendment on page 7, before item 6, to read that a Council Member had support for mobile home parks to be able to transition to permanent structures on lots.

- H. **CONSIDERATION OF A MOTION TO ACCEPT THE SUMMARY OF THE JUNE 14, 2011 STUDY SESSION ON BOULDER'S ENERGY FUTURE.**
- I. **SECOND READING AND CONSIDERATION OF EMERGENCY ORDINANCE NO. 7795 CONCERNING CHAPTER 2-7, "CODE OF CONDUCT" B.R.C. 1981 AMENDING SECTION 2-7-15 REGARDING**

THE DEFINITION OF "CONFLICT OF INTEREST," AND AMENDING SUBSECTIONS (J), (K), (L) AND (M) OF CHAPTER 8-4-10, "ADVISORY COMMITTEES" REGARDING THE APPLICATION OF THE CODE OF CONDUCT TO GENERAL IMPROVEMENT DISTRICTS, AND SETTING FORTH RELATED DETAILS.

- J. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN EMERGENCY ORDINANCE ADOPTING SUPPLEMENT NO. 109, WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCE NOS. 7786, 7787, 7788, AND 7793 AND OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS, AS AN AMENDMENT TO THE BOULDER REVISED CODE, 1981.

Council Member Appelbaum moved, seconded by Morzel to adopt consent agenda items 3A through 3J with Council Member Gray's amendments on items 3F and 3G. The motion carried unanimously 9:0.

4. CALL- UP CHECK IN: - 6:19 p.m.

Council Member Morzel clarified that the applicant hoped for the vacation of the easement for the purpose of potential expansion of the home.

No interest was expressed in calling up the item.

ORDER OF BUSINESS

5. PUBLIC HEARINGS: - 6:21 p.m.

- A. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE SUBMITTING TO THE VOTERS AT THE ELECTION ON NOVEMBER 1, 2011, A BALLOT ISSUE THAT WOULD: WITHOUT RAISING TAXES, INCREASE THE DEBT OF THE CITY UP TO 49 MILLION DOLLARS FOR CAPITAL IMPROVEMENT BONDS TO FUND CAPITAL IMPROVEMENT PROJECTS THAT MAY INCLUDE, WITHOUT LIMITATION:

- REPAIRING AND MAINTAINING STREETS AND PATHWAYS;
- REPAIRING AND REPLACING STRUCTURALLY DEFICIENT BRIDGES AND STRUCTURES;
- COMPLETING MISSING LINKS IN THE TRANSPORTATION SYSTEM;
- REPAIRING AND RENOVATING AGING CITY FACILITIES;
- REPLACING AND MODERNIZING CORE SERVICE COMPUTER SOFTWARE;
- MODERNIZING BASIC POLICE AND FIRE SAFETY FACILITIES AND EQUIPMENT;
- RENOVATING AND REPAIRING PARKS AND RECREATION FACILITIES;
- RENOVATING PORTIONS OF THE MAIN LIBRARY;

• **IMPROVING CONNECTIONS AND STREETSCAPES DOWNTOWN,
AND SETTING FORTH RELATED DETAILS.**

City Manager Brautigam provided the presentation on the item. She indicated the Capital Investment Stakeholder group had been meeting since May to bring this recommendation to Council. Staff completely supported the stakeholder group's recommendation. She provided a brief history of Boulder's CIP investments which was significantly impacted by the economic downturn. As a result, some time passed in which the City failed to invest appropriately in maintaining capital infrastructure. The purpose of the Capital Investment Strategy was to advance the capital investments to catch up to where it had fallen behind, without increasing taxes and to focus on significant deficiencies. The City's bonding capacity would be up to \$55 million dollars with current revenues. The 49 million recommended would be a \$4 million annual payment. The stakeholder group fully vetted the projects recommended. The bonding requirements were that the projects must be capital (not operating), must be shovel ready, and must be one-time expenditures. If changes were made to the project list by Council, they had to be consistent with the bonding requirements. Staff questions were whether the bonding amount was appropriate with 49 million although Council had the ability to go up to 55 million; whether Council wanted to add or delete any projects from the list; and whether there were any second reading questions. If approved by voters, the projects would be incorporated into the CIP.

Deputy Mayor Wilson thought aging fire trucks were a large concern in the past and he did not see those in the recommendation. City Manager Brautigam indicated this was discussed during the fire assessment discussion. One new truck was coming into the fleet and was not currently the highest priority need. Mr. Wilson asked how much flexibility a future council would have in shifting some of the dollars if appropriate. City Manager Brautigam responded that the only flexibility would be if it was shifted to a project that could be subsumed under the same title and fit the criteria. Finance Director Bob Eichen then noted that the monies needed to be spent within the first three years and anything longer may require conversations with the rating agencies.

Council Member Becker asked if changes to the project list could be made on August 2. City Manager Brautigam indicated there was still time to make changes and a third reading could be done on August 16. Council Member Becker suggested this be discussed at second reading on August 2. She then asked whether it made sense to partially fund projects. City Manager Brautigam indicated that some of the projects had specific increments that would actually accomplish something worthwhile.

Council Member Appelbaum asked if staff were reasonably confident that some of the funding wouldn't be needed for general operating needs. City Manager Brautigam indicated that if bonds were issued, staff knew that money could not be utilized for other operating needs. Instead, this could require cuts in the operating budget or lowering service levels. She indicated the city could not afford not to invest in capital needs. Council Member Appelbaum then asked how particular projects such as Columbia Cemetery and the Library ended up being included. City Manager Brautigam explained how the voting was done and indicated it was also based upon the community survey.

Council Member Ageton clarified that items that were identified in the suggested motion language would actually show up on the ballot. Staff confirmed this. She then asked about bridge replacement projects that were not included. City Manager Brautigam noted that more information would be provided on this in the second reading memo. Ms. Ageton then asked what the approach would be to additional operating costs if this money were dedicated to capital projects. She then asked what other thoughts the committee had about getting the mix of projects right given voter strategy. City Manager Brautigam commented that the stakeholder group didn't spend a lot of time on that and instead focused primarily on the significant deficiencies criteria.

Council Member Gray asked the City Manager to elaborate on what the contingency plan would be if revenues dipped enough that programs had to be cut in the future. Regarding the Library, teen and children area, she thought it would be useful to talk to the architect on the original team that designed it. Regarding neighborhood park shelters, she hoped that item included expanding shaded areas for children due to the risks of melanoma. City Manager Brautigam confirmed that the item did include shade structures. Regarding pedestrian improvements, Council Member Gray didn't understand how that would increase bus lanes. She then asked if Bike share could be accommodated under some of the other projects, such as downtown improvements. City Manager Brautigam indicated that item was not recommended by the stakeholder group. Council Member Gray requested statistics from bike share and how it fit into the overall transit plan for the City. It would be nice to have a list of other funding opportunities.

Council Member Karakehian expressed that he shared the uneasiness with maxing out the city's bonding capacity as expressed by other members. He asked if there was a list somewhere of exactly how the 3 million would be spent as of today. Staff confirmed that yes, those lists existed. He would like to see the list of the transportation/multi-use path connections and transportation/pedestrian enhancements.

Council Member Cowles asked about sidewalk improvements on Arapahoe, east of Folsom on the south side of Arapahoe.

The public hearing was opened at 7:13 p.m.

1. Ruth Blackmore on behalf of PLAN Boulder County indicated the Board voted unanimously in support of the item and urged Council to adopt the stakeholder group recommendation.
2. Dan Powers speaking as the Community Relations Coordinator for Western Disposal Services indicated this needed to take a front seat on the ballot and fully supported the projects provided by the stakeholder group.

There being no further speakers the public hearing was closed.

Mayor Osborne indicated she would support the stakeholder recommendation.

Council Member Gray asked staff to put the project names under the ballot title headings for Council's information on second reading (not on the actual ballot itself).

Council Member Ageton moved, seconded by Karakehian to introduce and order published by title only Ordinance No. 7798 submitting to the voters at the election on November 1, 2011, a ballot issue that would: without raising taxes, increase the debt of the city up to 49 million dollars for capital improvement bonds to fund capital improvement projects that may include, without limitation:

- repairing and maintaining streets and pathways;
- repairing and replacing structurally deficient bridges and structures;
- completing missing links in the transportation system;
- repairing and renovating aging city facilities;
- replacing and modernizing core service computer software;
- modernizing basic police and fire safety facilities and equipment;
- renovating and repairing parks and recreation facilities;
- renovating portions of the main library;
- improving connections and streetscapes downtown,

and setting forth related details.

The motion carried unanimously 9:0 at 7:25 p.m.

B. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO PUBLISH BY TITLE ONLY FIVE CHARTER AMENDMENT ORDINANCES SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER, COLORADO, AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 1, 2011, THE QUESTIONS OF:

- 1. AN ORDINANCE PROVIDING CLEANUP PROVISIONS TO REFLECT THE CURRENT ORGANIZATIONAL STRUCTURE;**
- 2. AN ORDINANCE WHICH PROVIDES PENALTIES FOR CHARTER VIOLATIONS TO BE CONSISTENT WITH PENALTIES FOR CODE VIOLATIONS;**
- 3. AN ORDINANCE CHANGING ELECTION LANGUAGE TO BE CONSISTENT WITH CURRENT ELECTION PRACTICES;**
- 4. AN ORDINANCE REVISING THE PROCEDURE FOR INITIATIVES TO BE CONSISTENT WITH CURRENT ELECTION CALENDARS AND LIMITING THE TIME ALLOWED FOR PETITIONS TO BE CIRCULATED FOR SIGNATURES TO 180 DAYS; AND**
- 5. AN ORDINANCE TO CHANGE THE BASIS ON WHICH COUNCIL MEMBERS ARE COMPENSATED FOR MEETINGS TO BE MEASURED ON AN ANNUAL RATHER THAN A MONTHLY BASIS. – 7:25 P.M.**

City Clerk Lewis provided Council Members with a handout which included a letter from County Clerk Hillary Hall that outlined how election costs were calculated.

Council Member Ageton spoke as a member of the Charter Committee indicating that there wasn't anything to add other than what was included in the agenda packet.

There being no speakers the public hearing was closed.

Deputy Mayor Wilson asked whether staff had prioritized any of the five items. City

Attorney Carr responded the election items were always important and particularly item 4 (or D). Staff recommended that Council put them all on the ballot.

Council Member Becker asked about adding the definition of meeting to the charter and whether it was necessary. City Attorney Carr indicated it made sense to include a definition and it would codify current practice.

Deputy Mayor Wilson indicated he wouldn't support the compensation item for the ballot this year. He did not feel it was a significant enough change and the voters had continually turned down the item.

Council Member Appelbaum commented that he agreed with Deputy Mayor Wilson. He supported putting the definition of meeting in the Charter. He agreed that putting the compensation item, with such a minimal change, on the ballot would not necessarily be worth it. City Attorney Carr indicated a definition of meeting could be placed in the ordinance as a clean-up measure rather than moving forward the council compensation ordinance.

Council Member Gray supported keeping the compensation item off of the ballot and instead better defining the meetings.

Council Member Ageton agreed the compensation item provided wasn't significant enough to put on the ballot but did support further defining the term "meeting."

Council Member Morzel agreed with her colleagues.

Council Member Gray moved, seconded by Appelbaum to introduce and order published by title only:

1. Ordinance No. 7799 providing cleanup provisions to reflect the current organizational structure; *as amended by the blue handout*
2. Ordinance No. 7800 which provides penalties for charter violations to be consistent with penalties for code violations;
3. Ordinance No. 7801 changing election language to be consistent with current election practices;
4. Ordinance No. 7802 revising the procedure for initiatives to be consistent with current election calendars and limiting the time allowed for petitions to be circulated for signatures to 180 days; and

The motion carried unanimously 9:0 at 7:53 p.m.

5. An ordinance to change the basis on which Council members are compensated for meetings to be measured on an annual rather than a monthly basis.

No action was taken to move forward on first reading the draft ordinance regarding Council Compensation. Council did provided a not of five for Staff to return with language for defining the term meeting.

C. MATTERS RELATED TO THE CREATION OF A MUNICIPAL LIGHT AND POWER UTILITY: - 7:56 P.M.

- 1. INTRODUCTION, FIRST READING, AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 1, 2011, THE QUESTION OF AMENDING THE CITY CHARTER TO AUTHORIZE THE CITY COUNCIL TO CREATE A LOCAL UTILITY AND THE PRINCIPLES FOR THE OPERATION OF SAID UTILITY FOR THE DISTRIBUTION OF ELECTRICITY; AUTHORIZING THE CITY COUNCIL TO ISSUE BONDS FOR THE ACQUISITION OF THE DISTRIBUTION SYSTEM AND OTHER ASSETS NECESSARY FOR THE OPERATION OF THE LOCAL UTILITY; AND SETTING FORTH RELATED DETAILS.**
- 2. INTRODUCTION, FIRST READING, AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 1, 2011, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO EXTEND AND INCREASE THE CLIMATE ACTION PLAN TAX THAT WAS APPROVED BY THE VOTERS IN NOVEMBER 2006 AND APPROVED BY THE CITY COUNCIL IN CHAPTER 3-12, B.R.C. 1981, THROUGH MARCH 31, 2018 AS AN EXCISE TAX COMPUTED UPON THE BASIS OF THE AMOUNT OF ELECTRICITY USED BY RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL CUSTOMERS FOR THE PURPOSES OF FUNDING THE CLIMATE ACTION PLAN TO REDUCE AND MITIGATE THE HEALTH AND SAFETY IMPACTS OF GREENHOUSE GAS EMISSIONS AND ADDRESS GLOBAL WARMING; FUNDING PRELIMINARY COSTS ASSOCIATED WITH THE CREATION OF A MUNICIPAL UTILITY; GIVING APPROVAL FOR THE COLLECTION, RETENTION, AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; SETTING FORTH THE BALLOT TITLE; AND SETTING FORTH RELATED DETAILS.**

City Manager Brautigam provided the introduction to the item. The purpose of the item was to present the staff recommendation and rationale, review the proposed ordinances, take public testimony, and decide whether to pass the ordinances on first reading.

Staff recommended that Council ask the voters to approve the next steps to move forward on creating a municipal electric utility and extend and increase the Climate Action Plan tax to fund the interim costs of creating a new utility.

City Manager Brautigam explained that the City's purpose was to respond in a responsible and pro-active manner to a changing energy economy, reduce exposure to fluctuating energy prices, reduce greenhouse gas emissions, maximize the local benefit of energy investments and create more choice and competition positioning Boulder as a center for energy innovation. She indicated that staff rigorously worked with and investigated the Xcel proposal. Xcel was insistent upon placing a standard 20-year franchise on the ballot and staff was not recommending that at this time.

City Attorney Tom Carr acknowledged and thanked the staff from Xcel and NextEnergy for all of their efforts. He noted the negotiations only fell apart due to the inability to find the appropriate compromise.

Mike Hubbard from the Financial Engineering Company out of Rockport Maine provided an overview of the Municipal Utility Feasibility Study. The intended use of the model was to project the financial feasibility of a municipally-owned utility. The model was refined as far as it could go and had been reviewed by Xcel. The savings provided in the model gave the city options for local resource planning and promote renewable industries. The model could absorb between \$70 million and \$100 million in additional one-time costs with rate parity. Mr. Hubbard then described the bond issuance process which would cover approximately \$121 million in one-time acquisition costs, start up costs (including operating cash reserves, severance, logistics, legal engineering and spare equipment for a total of about \$223 million. He also showed a model that reflected a time period of paying off the bonds and interest. Different scenarios were shown with a variety of acquisition costs and percentage rates. Assumptions had been conservative in all the models. Mr. Hubbard concluded that the model showed that municipalization was financially feasible, provided rate parity, significant savings in the early years which provide numerous options for ratepayers, and the additional costs can be absorbed and still have a financially viable project.

David Gehr, Deputy City Attorney, then provided an overview of the ordinances presented as proposed ballot measures to create the municipal utility and increase and extend the Climate Action Plan (CAP) Tax. He suggested Council could continue its discussion related to governance issues at the July 26 Council study session. Mr. Gehr described Council's authority to create a municipal utility and issue revenue bonds and what was required to be approved by voters per the Charter. He then spoke to the need to extend the CAP tax to 2018 to fund existing programs and increase it to fund the utility start up costs.

City Manager Brautigam then spoke to the process timeline and potential off ramps at key decision points. She explained that the next steps if voters approved the ballot measures, staff would hire key experts, conduct analyses and negotiations and continue outreach. If voters did not approve the ballot measures, staff would meet with council to discuss potential next steps to move forward on the community's energy goals.

Deputy Mayor Wilson asked the City Attorney if another option could be crafted to incorporate the wind deal without talking about a franchise. City Attorney Tom Carr indicated that yes, something could be drafted (out of Attachment C).

Council Member Karakehian asked if costs were projected at each of the off ramp time periods. City Manager Brautigam indicated that staff had estimated approximately \$1.2 million on average depending on the steps being taken. Additional staff could cost half a million per year.

Kirk Gibson, a consultant for city staff, indicated that each off ramp was more expensive as more was being invested. At the close of each off ramp, more cost projections would be available. Litigation costs at any point could certainly cost the city significantly more.

Council Member Karakehian raised concern about CU/IBM and whether there were within the City's service area and whether they would have the opportunity to opt out. Those entities were within the service area and could not opt out.

Council Member Ageton followed up by asking whether any residents could opt out. City Attorney Tom Carr indicated that he did not believe anyone could opt out within the service area. She then asked whether it was typical to pay interest only on the bonds. Chief Finance Officer Bob Eichem then explained the bond process and appropriateness of utilizing bonds for this project and how this would impact the City in the context of the rating agencies. Ms. Ageton also asked what would happen if the municipal utility ballot measure passed and the increase in the CAP tax did not. Staff clarified that this would still give Council the authority to create the municipal utility and it would then have the decision of whether to seek different sources of funding.

Council Member Appelbaum asked what the model would look like if the remaining energy needs came from natural gas instead of Xcel's coal plants. He also asked what would happen to the CAP and/or Occupation tax once the utility was formed. Mr. Gehr explained the Occupation tax would end but the CAP tax, although in theory would go away, could continue as a tax on the customer. Council Member Appelbaum expressed an interest in seeing a model based on a longer period of time.

Council Member Becker then asked if specifications for board members and terms would have to be changed in the charter. Mr. Gehr confirmed that it would. She then asked how the rate structures would be determined. Mr. Gehr highlighted the guidelines and regulations outlined in the memo and noted the same classes of users would be treated consistently based on industry standards.

Council Member Cowles clarified that the utility would not be required to purchase energy based on coal.

The public hearing was opened at 9:30 p.m:

1. Brad Collins expressed that creating a municipal utility would be another thing that made Boulder unique and a community that lived up to its values. He supported moving this forward to the voters.
2. Clif Harald, Director of the Boulder Economic Council, spoke to the risks involved with energy rates due to the number of large organizations in the community which could in turn impact economic vitality. Quantify more of the unknown costs and more

specifically define how different portfolios would affect rates. Deputy Mayor Wilson asked Mr. Harald to forward this information via e-mail.

3. Buzz Burrell asked Council to keep Boulder's options open. He liked the idea of municipalization but felt like the residents should have options. He would like to see some numbers on the off ramps. Clear, honest and real language was important.
4. Jim Hartman a local small business owner who recently traveled to Africa expressed that Boulder should lead Climate Change by example. He would like to see something in the ballot measure that rates would not increase past a certain amount. He thanked Council for moving this forward.
5. Robert Osborn, Director of Communications for Xcel Energy Colorado, expressed that this was an expensive and risky path that would not provide any additional renewables in the next several years. They were not interested in selling their system and did not endorse the feasibility report.
6. Teresa Foster, Longmont resident, spoke to Longmont's utility system which had very low rates and worked well for residents. She applauded Boulder for pursuing a brave, new direction.
7. Julie Zahniser applauded City Manager Brautigam and staff for their work on this project. As a member of Renewables Yes she strongly supported the item moving forward. She recommended clarity in the financial limits at the various off ramps. The citizen understanding is best if expressed in relation to the amount on their bill. Citizens also seek confidence and would like Council to clearly state a governing process and framework for the municipal utility.
8. Angelique Espinoza, Public Affairs Manager at the Boulder Chamber, spoke to the risks and suggested the public utility board should be independent of politics and the exit points would be important to minimize financial risk. Please consider holding the item for next year's ballot to allow it to develop more fully.
9. Steven Haymes expressed disappointment with city staff for ending the negotiations with Xcel. He commented that Boulder's residents should have as much of an equal opportunity to vote on the franchise as well as municipalization in the upcoming election. Council Member Becker suggested Mr. Haymes provide any technical information he has available to City staff.
10. Ruth Blackmore on behalf of PLAN Boulder County, expressed that it fully supported this item moving forward to the ballot. She urged Council to add language to the ballot measure ensuring voters that clear decision points existed to ensure the community's best interest.
11. Susan Graf, CEO of the Boulder Chamber expressed that this felt like a huge rush to the ballot. She reminded Council that in a recent survey commercial users were primarily concerned about reliability and rates. She felt Boulder could come up with a more innovative solution. She would provide recent survey results to Council Members.
12. Hunter Coohill a CU student thanked Council for its work on this local priority. He raised concern that municipalization would increase rates which would in turn increase college tuition again. He felt it was important to have multiple options on the ballot.
13. Neal Lurie, Executive Director of the Colorado Solar Energy Association, indicated that consistent feedback he had heard was that this could be a major economic driver

- for boulder. There were valid risks mentioned but equally valid risks for inaction. He expressed that the benefits of moving forward far outweighed the risks.
14. Cara McMillan as a 40 year resident of Boulder supported municipalization and noted how well it worked in other communities.
 15. Yazan Fattaleh, CU student, agreed with Hunter Coohill's comments and agreed the idea was risky and was concerned about tuition.
 16. Lynn Segal spoke in support of municipalization moving forward but liked the idea of having options available to residents.
 17. Michael Gray, not a Boulder resident, but in the wind energy business and supported the city moving forward with municipalization. He would also like to see the smokestack removed that is visible coming into Boulder on Highway 36.
 18. Karey Christ-Janer was supportive of the City's work on this but was convinced a hybrid model may be the ultimate answer. She wasn't sure the City was ready to give up any options.
 19. David Miller expressed that he was deeply disappointed when he heard of the wind deal with Xcel falling apart and that residents wouldn't have an opportunity to vote on it. He urged the City to provide another option to residents.
 20. Heather Henfrey expressed her support for municipalization and also felt the City should keep its options open. She did not think that CU's tuition would go up as they had already committed to becoming climate neutral.
 21. Ed Byrne spoke to the risks and assumptions with municipalization. He suggested that options should be available and thought Deputy Mayor Wilson might be on to something.
 22. Anne Butterfield expressed there was no reason not to proceed although she hoped additional options would arise. Rate parity should be an explicit goal.
 23. Jason Wiener with Namaste Solar on behalf of the Boulder Energy Coalition, spoke to the fact that Xcel's proposal would not address Boulder's energy future goals and he supported the municipalization item moving forward to the ballot.
 24. Brad Segal agreed with the previous speakers' comments and supported municipalization.
 25. Ray Tuomey Co-Founder of Namaste Solar thanked Council and staff for its work on this issue. He urged Council to continue to be forthright and transparent in its decision-making and ensure the business community would continue to be included in the decision making after the vote.
 26. Charlie Olness spoke in support of municipalization and thought there was a far greater risk in staying with Xcel.
 27. Jack Mason spoke to localization and how it was not the same as municipalization. He provided Council Members with a white paper handout on localization. Please consider localization as an independent strategy.
 28. Jonathan Hondorf expressed that change involved taking risks and pursuing solutions showed Boulder's willingness to walk the talk. Municipalization was more than just about wires and poles, but about having choice.
 29. Joe Fischer strongly supported Council moving municipalization forward. He was a former Gainesville, Florida resident who has a municipal utility and currently offers many renewable energy programs.

30. Sam Weaver a member of the city's technical team spoke on behalf of the Boulder Clean Energy Coalition. Generally the group agreed with the city's modeling and analysis. He urged Council to move forward with municipalization.
31. Sara Sims, resident and small business owner, spoke in support of municipalization and Dennis Eastman's presentation inspired her. She had complete confidence in the City.
32. Ken Regelson pooling time with Tom Asprey and Allison Burchell expressed the opinion that Boulder voters would say yes to municipalization, off ramps, and all of the possibilities it represented. Encouraged Council to show the courage to move this forward.

Council Member Morzel moved, seconded by Ageton to suspend the rules and continue the meeting at 10:37 p.m. The motion carried unanimously 9:0.

33. Tim Trumble one of the owners of Leanin' Tree, spoke to the number of employees that were not residents of Boulder but how the decision would impact them in terms of cost and reliability. They felt the issue was moving forward too quickly and didn't have a strong opinion in support of, or opposing the issue.
34. Ben Binder supported the proposal before Council on municipalization. He would like to see Boulder's electric supplier in Boulder residents' best interest. Don't get caught up in analysis paralysis.
35. Cliff Smedley with Renewables Yes, thanked Council for its work and dedication. 65% of utilities in the Country were municipal utilities. So many had done this successfully there was no need for so much fear.
36. Eric Blank urged Council to take advantage of the existing programs Xcel offers. He encouraged the city to keep its options open by placing a third initiative on the ballot to create a Boulder energy initiative separate from the other items.
37. Nashima Abraham a Nomad Housing neighborhood and Communication and Campaign manager for Eco Cycle noted that Eric Lombardi was strongly in favor of municipalization. Speaking on her own behalf, she supported moving municipalization forward.
38. Leslie Glustrom raised concern that if the Xcel Franchise came back up, the citizens weren't involved in that initially but would want to have input. She suggested that rate case costs were passed on to the users. She urged council to read statute 31-15-707.
39. Phil Delamara spoke to the lowering solar costs and urged Council to move forward with municipalization.
40. Carolyn Bninski indicated the Rocky Mountain Peace and Justice Center supported municipalization and urged Council to move forward and use as many renewables as possible.

There being no further speakers the public hearing was closed at 11:00 p.m.

Council Member Gray moved, seconded by Morzel to:

(1) Introduce and order published by title only Ordinance No. 7804 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 1, 2011, the question of amending the city Charter to authorize the City Council to create a local utility and the principles for the operation of said utility for the distribution of electricity; authorizing the City Council to issue bonds for the acquisition of the distribution system and other assets necessary for the operation of the local utility; and setting forth related details; and

(2) Introduce and order published by title only Ordinance No. 7805 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 1, 2011, the question of authorizing the City Council to extend and increase the climate action plan tax that was approved by the voters in November 2006 and approved by the City Council in Chapter 3-12, B.R.C. 1981, through March 31, 2018 as an excise tax computed upon the basis of the amount of electricity used by residential, commercial, and industrial customers for the purposes of funding the climate action plan to reduce and mitigate the health and safety impacts of greenhouse gas emissions and address global warming; funding preliminary costs associated with the creation of a municipal utility; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; and setting forth related details.

The motion carried unanimously 9:0 at 11:55 p.m.

Council Discussion:

Council Member Appelbaum listed several things he wanted to see in the next discussion including the payment in lieu of taxes issue and making it explicit, he would like to see the cap tax replaced with the occupation tax or an alternative for an occupation tax to fund the up front costs, and address the sunseting of the existing taxes if and when a municipal utility is formed and also if and when the increase would sunset should municipalization not move forward. Additionally, he thought the rate preferences for low income individuals was too open ended and he hoped to see another alternative, as well as to develop a fund to assist low income residents. He indicated that initially the actual operations of the utility would be run by a third party under city supervision. The rate parity issue needed to be clear but couldn't be absolute. How would council decide when to pull the trigger? Perhaps some criteria should be established. Regarding the utility board, he thought it needed to be clear when the board would be actually created and he thought the board should have some requirements for some of the seats to fully represent the community interests.

Council Member Morzel moved, seconded by Wilson to suspend the rules and continue the meeting at 11:00 p.m. The motion carried 8:1; Karakehian opposed.

Council Member Cowles agreed with Council Member Appelbaum's comments and clarified that triggers or criteria were needed when the decision was made to buy the distribution system. Regarding payments in lieu of taxes (PILOT) limitations were needed to ease public fear. He would like to hear the rationale behind utilizing the occupation tax. He agreed

clarity around the sunseting taxes would make this a better ballot issue. With respect to low income individuals, he agreed the utility should offer a similar program that Xcel offered to low income residents. Council Member Appelbaum clarified that perhaps the city could develop a more specific approach. Council Member Cowles did not agree that a third party contractor needed to run the utility. Regarding rate parity, he agreed this needed to be clear but thought it was stated adequately in the purposes section. Criteria for taking an off ramp should be stated in the materials. Regarding the utility board, he thought 3 or 4 of the seats should be occupied by individuals representing commercial or industrial accounts.

Council Member Becker expressed that the payment in lieu of taxes needed to be more explicit and include payment to Boulder Valley School District. The sunseting was important, the language related to low income residents was too open ended, criteria for knowing when to take an off ramp was extremely important, the utility board should be a hybrid between city manager and city council appointments and should include specific criteria for members. How could this remain a-political? She added that she was interested in including an actual overall limit on the bonding number.

Deputy Mayor Wilson indicated he would support placing this on the ballot but would be offering a different proposal. He thought the bond issue Council Member Becker just mentioned was important. He thought some limited and unlimited capability was needed and asked staff to provide some numbers. He expressed concern about the CAP tax focused on residents and the occupation tax focused so much on commercial and industrial. He wondered if either were adequate to fund the path of condemnation. He expressed concern about needing to understand whether the city would be required to pay Xcel's legal fees or costs. The City Attorney's office indicated it would report back. Mr. Wilson agreed with comments raised concerning the composition of a utility board. Criteria for off-ramps needed much more discussion at the study session. Rate parity was a dangerous one and needed clarity to ensure money was later borrowed from the General Fund. City Manager Brautigam commented the City was not allowed to do this under Tabor. He did not want restrictions such as the requirement of utilizing a private contractor to run the utility. He thought this matter could take years and that would be too limiting.

Council Member Ageton agreed with most of Council Member Appelbaum's comments and especially favored utilizing the utility occupation tax rather than the CAP tax, she thought the utility occupation tax would be seen as something that would end when the City became a utility. She shared the concern about the tax sunseting should an off ramp be taken early. She did not favor hiring a contractor to run the utility and agreed it was too limiting initially. She was concerned about Charter language that was too detailed (i.e. all of the descriptions about the functions of the director), no other director had their functions so detailed in the Charter. She was happy to see the utility board creation showing up near the end of the timeline. She favored the board acting in a more advisory capacity initially which would allow Council to delegate more responsibilities over time. She would prefer to have the entire board appointed by the city manager to avoid it becoming politicized or at minimum a blend. She thought it might be too early to designate categories for board members. This would be incorporated into the Charter and would be difficult to change at a later date. She shared concerns about unlimited bonding authority and would like to see additional options

brought back at second reading. She would like more clarification about the amount proposed to increase the taxes (i.e. 2 million per year over a 6 year period). The figures in the memo talked about higher amounts.

Mayor Osborne commented that it sounded like overall, council sought more clarity and wanted to be more specific in some areas for the voters. She was uncertain whether she would prefer the CAP tax or the occupation tax and hoped more discussion could take place at the next meeting. She agreed a fund to assist lower income residents was preferred over a separate rate category. She did not support using a contractor to initially run the utility and did not feel it should be in the language. In terms of rate parity, she hoped the commitment would be more to rate parity within a percent or two of the current utility and was more comprehensible to residents. She was less interested in putting the bond limit on because she felt it wasn't easy to understand, but what one pays for energy was clearer. She suggested a larger board of 9 members with a hybrid approach to appointments and categories for large commercial and small businesses. She hoped this could be discussed further at the next meeting.

Council Member Karakehian expressed he was in favor of the PILOT, leaning to yes on the occupation tax but needed to further understand the implications and agreed it should sunset, he wanted to leave it open about whether to utilize a contractor, he was very concerned about the politicizing of the utility board, he would like it to be city manager appointments or a hybrid. Regarding rates he thought this was a primary concern in the community. He also heard from community members that they did not want to give Council a blank check in terms of bonding. He would like to see a number in the final ballot language. He would also like to see a specific mechanism in place to assist low income residents.

Council Member Gray was fine with the payment in lieu of taxes approach expressed by Council Member Appelbaum, she liked the idea of a 9 member board and would like to see how other cities with municipal utilities are set up. She was not adverse to having out of city individuals on the board but knew this was a controversial issue. She would like to see a fund set up for low income residents. She agreed that it was too early to restrict the language about utilizing a contractor. She agreed with her colleagues on rate parity and the taxes. She also agreed with the idea of setting bonding limits. She encouraged large businesses and CU students to reach out to other large businesses already within cities who have municipalities to see how the utility service works for them.

Council Member Morzel agreed the payment in lieu of taxes needed to be more explicit, she needed more information to determine whether the CAP tax or occupation was used. She wanted to ensure whichever was used provided an equal rate for different users. She asked how the occupation tax would be collected as it was currently collected by Xcel and what kind of tax would be used after that. City Manager Brautigam indicated this was part of what the payment in lieu of taxes was. Council Member Morzel agreed with the idea of developing a fund to help low income residents. She thought it was premature to decide about utilizing a contractor to run the utility. She agreed establishing criteria for off ramps was important. She compared the utility board with the water board and didn't necessarily think it would become overly political. She thought a larger board would be appropriate.

She wanted to ensure a strong range of expertise and representation but did not want to specify those. She felt strongly that Council should make those appointments but would be open to a hybrid model. She wanted to ensure rate parity and thought municipalization would provide lower rates. In terms of bonding limits, she wanted this in understandable terms for residents. She expressed that it was very important to limit the rates.

Vote was taken on the main motion at 11:55 p.m.

Deputy Mayor Wilson moved, seconded by Ageton to introduce, complete first reading, and order published by title only an ordinance submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 1, 2011, the question of amending the city charter to authorize the city council to create a local utility and the principles for the operation of said utility; and authorizing the City Council to issue bonds to invest in clean energy projects and to meet other energy goals; and setting forth related details in substantially the form set forth in the attachment C to item 7B. The motion failed 3:6; Ageton, Becker and Wilson in favor. 12:15 a.m.

Open Comment was re-opened at 12:20 a.m.

1. Lynn Segal was against corporate personhood.
2. Brad Segal expressed his support for placing the corporate personhood item on the ballot.
3. Rachael Pryor pooling time with Killeen Raska and Marta Coucher, with Boulder Meds, asked Council to have staff reconsider its denial of their medical marijuana license. The denial was based on an incorrect CBI report which had since been rectified.
4. Jay Epstein pooling time with Kyle Huber and Gavin Campbell, owner of Boulder Meds also urged Council to allow an appeal to their medical marijuana license denial.
5. Leslie Murhead also urged Council to assist in providing Boulder Meds with a fair appeal.
6. Josh, an employee of Boulder Meds also asked Council to allow an appeal for the Boulder Meds medical marijuana license denial.
7. Bonnie Dougherty spoke in support of Mr. Epstein and his Boulder Meds business.
8. Noah Limberg, a medical marijuana patient with sever tourettes syndrome indicated that he was a supporter of Boulder Meds.
9. Richard Hart also spoke in support of the Boulder Meds medical marijuana appeal.
10. James Coucher urged Council to help Jay Epstein keep his business going.

11. John Toland also supported Jay Epstein and his Boulder Meds business.
12. Williams Donovan also supported an appeal process for Boulder Meds.
13. Russell Parks spoke in favor of placing the corporate personhood item on the ballot.
14. Jason Love also spoke in favor of the situation with Boulder Meds and finding a way to support the original intent of the state law.
15. Shirley Jean Huftly urged Council to put corporate personhood on the ballot.

6. **MATTERS FROM THE CITY MANAGER:** None.

7. **MATTERS FROM THE CITY ATTORNEY:**

A. **Xcel Negotiation Update. - 12:55 a.m.**

City Attorney Tom Carr indicated the Xcel negotiations broke down due to the principle matter that Council was not in favor of placing an item on the ballot that was a stand alone franchise. .

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. **Potential Call-ups: - 1:00 a.m.**

1. **Vacation of a ten foot strip (2,347 square feet total) of an existing twenty foot wide utility easement at 1765 Sunset Blvd.** Information Packet date: July 13, 2011. Last opportunity for call-up is July 19, 2011. Staff level approval.

No action was taken on this item

B. **Possible Advisory vote recommending an Amendment to the United States Constitution. - 1:00 a.m.**

The presentation was provided by Emily Renwick and Debby Moglanski, law clerks with the City Attorney's office. They provided a definition of corporate personhood and some history of how corporations' rights had been addressed in the supreme court as well some history on the Citizens United ruling. They then provided specific ballot language for consideration.

Council provided a nod of five to bring back first reading options at the August 2 Council Meeting.


9. **PUBLIC COMMENT ON MATTERS:** None.

10. **FINAL DECISIONS ON MATTERS:** None.

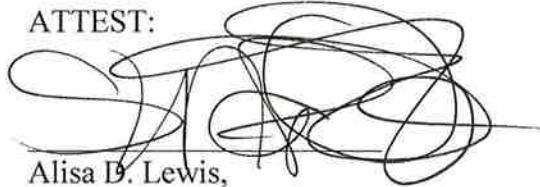
11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION
REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 1:28 A.M.

APPROVED BY:


Susan Osborne,
Mayor

ATTEST:


Alisa D. Lewis,
City Clerk